



Reprinted  
April 10, 2003

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## ENGROSSED HOUSE BILL No. 1243

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DIGEST OF HB 1243 (Updated April 9, 2003 4:23 PM - DI 92)

**Citations Affected:** IC 36-9; noncode.

**Synopsis:** Sewer liens. Requires a municipality to charge a deposit to ensure payment of sewer fees. Limits the liability of a landowner for delinquent sewer fees incurred by a tenant. Provides that the municipal officer responsible for collecting municipal sewer fees record and certify liens relating to delinquent sewer fees by using either a list or individual instruments. Requires that certification occur not later than 10 days after recording. Voids certain liens recorded to enforce the collection of unpaid sewer fees and penalties.

**Effective:** Upon passage; July 1, 2003.

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### Ayres, Stevenson

(SENATE SPONSORS — SKILLMAN, DEMBOWSKI, YOUNG R MICHAEL)

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January 13, 2003, read first time and referred to Committee on Local Government.  
February 17, 2003, amended, reported — Do Pass.  
February 20, 2003, read second time, ordered engrossed. Engrossed.  
February 24, 2003, read third time, passed. Yeas 96, nays 0.

SENATE ACTION

February 27, 2003, read first time and referred to Committee on Judiciary.  
April 3, 2003, reported favorably — Do Pass.  
April 9, 2003, read second time, amended, ordered engrossed.

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EH 1243—LS 6780/DI 75+



Reprinted  
April 10, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1243

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 36-9-23-25 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 25. (a) The municipal  
3 legislative body shall, by ordinance, establish just and equitable fees  
4 for the services rendered by the sewage works, and provide the dates  
5 on which the fees are due.  
6 (b) Just and equitable fees are the fees required to maintain the  
7 sewage works in the sound physical and financial condition necessary  
8 to render adequate and efficient service. The fees must be sufficient to:  
9 (1) pay all expenses incidental to the operation of the works,  
10 including legal expenses, maintenance costs, operating charges,  
11 repairs, lease rentals, and interest charges on bonds or other  
12 obligations;  
13 (2) provide the sinking fund required by section 21 of this  
14 chapter;  
15 (3) provide adequate money to be used as working capital; and  
16 (4) provide adequate money for improving and replacing the  
17 works.

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Fees established after notice and hearing under this chapter are presumed to be just and equitable.

(c) The fees are payable by the owner, **occupant, or lessee** of each lot, parcel of real property, or building that:

(1) is connected with the sewage works by or through any part of the municipal sewer system; or

(2) uses or is served by the works.

Unless the municipal legislative body finds otherwise, the works are considered to benefit every lot, parcel of real property, or building connected or to be connected with the municipal sewer system as a result of construction work under the contract, and the fees shall be billed and collected accordingly.

(d) The municipal legislative body may use one (1) or more of the following factors to establish the fees:

(1) A flat charge for each sewer connection.

(2) The amount of water used on the property.

(3) The number and size of water outlets on the property.

(4) The amount, strength, or character of sewage discharged into the sewers.

(5) The size of sewer connections.

(6) Whether the property has been or will be required to pay separately for any part of the sewage works.

(7) Whether the property, although vacant or unimproved, is benefited by a local or lateral sewer because of the availability of that sewer. However, the owner must have been notified, by recorded covenants and restrictions or deed restrictions in the chain of title of his property, that a fee or assessment for sewer availability may be charged, and the fee may reflect only the capital cost of the sewer and not the cost of operation and maintenance of the sewage works.

(8) The cost of collecting, treating, and disposing of garbage in a sanitary manner, including equipment and wages.

(9) The amount of money sufficient to compensate the municipality for the property taxes that would be paid on the sewage works if the sewage works were privately owned.

(10) Any other factors the legislative body considers necessary.

Fees collected under subdivision (8) may be spent for that purpose only after compliance with all provisions of the ordinance authorizing the issuance of the revenue bonds for the sewage works. The board may transfer fees collected in lieu of taxes under subdivision (9) to the general fund of the municipality.

(e) The municipal legislative body may exercise reasonable

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discretion in adopting different schedules of fees, or making classifications in schedules of fees, based on variations in:

- (1) the costs, including capital expenditures, of furnishing services to various classes of users or to various locations; or
- (2) the number of users in various locations.

SECTION 2. IC 36-9-23-28, AS AMENDED BY P.L.2-2002, SECTION 123, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 28. (a) The legislative body of a municipality that operates sewage works under this chapter ~~may~~, **shall** by ordinance require the owners, lessees, or users of property served by the works to pay a deposit to ensure payment of sewer fees.

(b) The deposit required may not exceed the estimated average payment due from the property served by the sewage works for a three (3) month period. The deposit must be retained in a separate fund.

(c) The deposit, less any outstanding penalties and service fees, shall be refunded to the depositor after a notarized statement from the depositor that as of a certain date the property being served:

- (1) has been conveyed or transferred to another person; or
- (2) no longer uses or is connected with any part of the municipal sewage system.

A statement under subdivision (1) must include the name and address of the person to whom the property is conveyed or transferred.

(d) If a depositor fails to satisfy costs and fees within sixty (60) days after the termination of his use or ownership of the property served, he forfeits his deposit and all accrued interest. The forfeited amount shall be applied to the depositor's outstanding fees. Any excess that remains due after application of the forfeiture may be collected in the manner prescribed by section 31 or 32 of this chapter.

(e) A deposit may be used to satisfy all or part of any judgment awarded the municipality under section 31 of this chapter.

(f) A deposit made under this section that has remained unclaimed by the depositor for more than seven (7) years after the termination of the services for which the deposit was made becomes the property of the municipality. IC 32-34-1 (unclaimed property) does not apply to a deposit described in this subsection.

SECTION 3. IC 36-9-23-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 32. (a) **Except as provided in subsections (c) and (f),** fees assessed against real property under this chapter or under any statute repealed by IC 19-2-5-30 constitute a lien against the property assessed. The lien is superior to all other liens except tax liens. Except as provided in subsections (b) and (c), the lien attaches when notice of the lien is filed in the county

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recorder's office under section 33 of this chapter.

(b) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before the conveyance to the subsequent owner. If the property is conveyed before the lien can be filed, the municipality shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not less than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

**(c) In the case of real property occupied by someone other than the owner, fees assessed against the real property under this chapter constitute a lien against the property assessed if:**

**(1) the delinquent fees are set forth in a notice described in subsection (d); and**

**(2) the delinquent fees set forth in the notice exceed the amount of the deposit paid to the utility by the person occupying the real property.**

**A lien established under this subsection may not exceed the difference between the amount of the deposit described in subdivision (2) and the amount of the delinquent fees set forth in the notice described in subsection (d). A lien established under this section may not be recorded until after the utility has made all reasonable attempts to collect the delinquent fees from the person that paid the deposit described in subdivision (2).**

**(d)** A lien attaches against real property occupied by someone other than the owner only if the utility notified the owner within twenty (20) days after the time the utility fees became sixty (60) days delinquent. However, the utility is required to give notice to the owner only if the owner has given the general office of the utility written notice of the address to which his notice is to be sent.

**(e)** The municipality shall release:

**(1) liens filed with the county recorder after the recorded date of conveyance of the property; and**

**(2) delinquent fees incurred by the seller;**

upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner, and that the purchaser has not been paid by the seller for the delinquent fees.

**(f) If delinquent fees incurred by someone other than the owner of the real property are paid by the owner as a result of an**

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1 enforcement action under this chapter, a subsequent delinquency  
 2 incurred by that same person does not constitute a lien against the  
 3 real property and is enforceable only against the person incurring  
 4 the delinquency.

5 SECTION 4. IC 36-9-23-33, AS AMENDED BY P.L.171-2002,  
 6 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 7 JULY 1, 2003]: Sec. 33. (a) An officer described in subsection (b) may  
 8 defer enforcing the collection of unpaid fees and penalties assessed  
 9 under this chapter until the unpaid fees and penalties have been due  
 10 and unpaid for at least ninety (90) days.

11 (b) Except as provided in subsection (1), the officer charged with the  
 12 collection of fees and penalties assessed under this chapter shall  
 13 enforce their payment. As often as the officer determines is necessary  
 14 in a calendar year, the officer shall prepare **either of the following:**

15 (1) A list of the delinquent fees and penalties that are enforceable  
 16 under this section, which must include the **following:**

17 (A) **The** name or names of the owner or owners of each lot or  
 18 parcel of real property on which fees are delinquent.

19 (B) A description of the premises, as shown by the records of  
 20 the county auditor. ~~and~~

21 (C) **The** amount of the delinquent fees, together with the  
 22 penalty. ~~or~~

23 (2) An individual instrument for each lot or parcel of real property  
 24 on which the fees are delinquent.

25 (c) The officer shall record a copy of each list or each individual  
 26 instrument with the county recorder who shall charge a fee for  
 27 recording ~~it the list or each individual instrument~~ in accordance with  
 28 the fee schedule established in IC 36-2-7-10. The officer shall then  
 29 mail to each property owner on the list or on an individual instrument  
 30 a notice stating that a lien against the owner's property has been  
 31 recorded. Except for a county having a consolidated city, a service  
 32 charge of five dollars (\$5), which is in addition to the recording fee  
 33 charged under this subsection and under subsection (f), shall be added  
 34 to each delinquent fee that is recorded.

35 (d) This subsection applies only to a county containing a  
 36 consolidated city. Using the lists and instruments prepared under  
 37 subsection (b) and recorded under subsection (c), the officer shall  
 38 certify to the county auditor a list of the liens that remain unpaid  
 39 according to a schedule agreed upon by the county treasurer and the  
 40 officer for collection with the next cycle's property tax installment. The  
 41 county and its officers and employees are not liable for any material  
 42 error in the information on the list.



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(e) Using the lists and instruments prepared under subsection (b) and recorded under subsection (c), ~~after September 1 of the preceding calendar year and before September 1 of the current calendar year~~, the officer shall, ~~before December 15 of each year~~ **not later than ten (10) days after the list or each individual instrument is recorded under subsection (c)**, certify to the county auditor a list of the liens that remain unpaid for collection in the next May. The county and its officers and employees are not liable for any material error in the information on this list.

(f) The officer shall release any recorded lien when the delinquent fees, penalties, service charges, and recording fees have been fully paid. The county recorder shall charge a fee for releasing the lien in accordance with IC 36-2-7-10.

(g) On receipt of the list under subsection ~~(d)~~ or (e), the county auditor of each county ~~(excluding a county having a consolidated city)~~ shall add a fifteen dollar (\$15) certification fee for each lot or parcel of real property on which fees are delinquent, which fee is in addition to all other fees and charges. The county auditor shall immediately enter on the tax duplicate for the municipality the delinquent fees, penalties, service charges, recording fees, and certification fees, which are due ~~no~~ **not** later than the due date of the next May installment of property taxes. ~~However,~~ In a county having a consolidated city, the delinquent fees, penalties, service charges, and recording fees are due not later than the due date of the next installment of property taxes. The county treasurer shall then include any unpaid charges for the delinquent fee, penalty, service charge, recording fee, and certification fee to the owner or owners of each lot or parcel of property, at the time the next cycle's property tax installment is billed.

(h) ~~After the date of certification in each year, of liens under subsection (e)~~, the officer may not collect or accept delinquent fees, penalties, service charges, recording fees, or certification fees from property owners whose property has been certified to the county auditor. This subsection does not apply to a county containing a consolidated city.

(i) If a delinquent fee, penalty, service charge, recording fee, and certification fee are not paid, they shall be collected by the county treasurer in the same way that delinquent property taxes are collected.

(j) At the time of each semiannual tax settlement, the county treasurer shall certify to the county auditor all fees, charges, and penalties that have been collected. The county auditor shall deduct the service charges and certification fees collected by the county treasurer and pay over to the officer the remaining fees and penalties due the

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1 municipality. The county treasurer shall retain the service charges and  
 2 certification fees that have been collected, and shall deposit them in the  
 3 county general fund.

4 (k) Fees, penalties, and service charges that were not recorded  
 5 before a recorded conveyance shall be removed from the tax roll for a  
 6 purchaser who, in the manner prescribed by section 32(d) of this  
 7 chapter, files a verified demand with the county auditor.

8 (l) A board may write off a fee or penalty under subsection (a) that  
 9 is for less than forty dollars (\$40).

10 **SECTION 5. [EFFECTIVE UPON PASSAGE] (a)**  
 11 **Notwithstanding IC 36-9-23-33 or any other law, a lien recorded**  
 12 **before May 1, 2003, to enforce the collection of unpaid fees and**  
 13 **penalties assessed under IC 36-9-23 is void if:**

14 **(1) the delinquent fees and penalties accrued on a lot or parcel**  
 15 **of real property that was not occupied by the owner or**  
 16 **owners of the lot or parcel of real property;**

17 **(2) the delinquent fees and penalties were accrued by one (1)**  
 18 **or more tenants of the owner or owners of the lot or parcel of**  
 19 **real property;**

20 **(3) a portion of the unpaid fees and penalties enforced by the**  
 21 **lien accrued at least twelve (12) months before the owner or**  
 22 **owners of the lot or parcel of real property received notice of**  
 23 **the delinquent fees; and**

24 **(4) a portion of the unpaid fees and penalties enforced by the**  
 25 **lien accrued at least twelve (12) months before the date the**  
 26 **lien was recorded.**

27 **(b) The officer charged with the collection of fees and penalties**  
 28 **assessed under IC 36-9-23 shall release a recorded lien that is void**  
 29 **under subsection (a). Service charges and recording fees may not**  
 30 **be imposed upon the owner or owners of the lot or parcel of real**  
 31 **property subject to a lien that is void under subsection (a).**

32 **(c) This SECTION expires January 1, 2004.**

33 **SECTION 6. An emergency is declared for this act.**





## COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1243, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 10, reset in roman "in a".

Page 1, line 10, delete "but not more often than once each".

Page 1, line 10, reset in roman "year,".

Page 1, line 10, delete "quarter,".

and when so amended that said bill do pass.

(Reference is to HB 1243 as introduced.)

MOSES, Chair

Committee Vote: yeas 12, nays 0.

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred House Bill No. 1243, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to House Bill 1243 as printed February 18, 2003.)

BRAY, Chairperson

Committee Vote: Yeas 7, Nays 0.

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EH 1243—LS 6780/DI 75+



SENATE MOTION

Mr. President: I move that Senator Young R Michael be added as cosponsor of Engrossed House Bill 1243.

SKILLMAN

SENATE MOTION

Mr. President: I move that Engrossed House Bill 1243 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 36-9-23-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 25. (a) The municipal legislative body shall, by ordinance, establish just and equitable fees for the services rendered by the sewage works, and provide the dates on which the fees are due.

(b) Just and equitable fees are the fees required to maintain the sewage works in the sound physical and financial condition necessary to render adequate and efficient service. The fees must be sufficient to:

- (1) pay all expenses incidental to the operation of the works, including legal expenses, maintenance costs, operating charges, repairs, lease rentals, and interest charges on bonds or other obligations;
- (2) provide the sinking fund required by section 21 of this chapter;
- (3) provide adequate money to be used as working capital; and
- (4) provide adequate money for improving and replacing the works.

Fees established after notice and hearing under this chapter are presumed to be just and equitable.

(c) The fees are payable by the owner, **occupant, or lessee** of each lot, parcel of real property, or building that:

- (1) is connected with the sewage works by or through any part of the municipal sewer system; or
- (2) uses or is served by the works.

Unless the municipal legislative body finds otherwise, the works are considered to benefit every lot, parcel of real property, or building connected or to be connected with the municipal sewer system as a result of construction work under the contract, and the fees shall be billed and collected accordingly.

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(d) The municipal legislative body may use one (1) or more of the following factors to establish the fees:

- (1) A flat charge for each sewer connection.
- (2) The amount of water used on the property.
- (3) The number and size of water outlets on the property.
- (4) The amount, strength, or character of sewage discharged into the sewers.
- (5) The size of sewer connections.
- (6) Whether the property has been or will be required to pay separately for any part of the sewage works.
- (7) Whether the property, although vacant or unimproved, is benefited by a local or lateral sewer because of the availability of that sewer. However, the owner must have been notified, by recorded covenants and restrictions or deed restrictions in the chain of title of his property, that a fee or assessment for sewer availability may be charged, and the fee may reflect only the capital cost of the sewer and not the cost of operation and maintenance of the sewage works.
- (8) The cost of collecting, treating, and disposing of garbage in a sanitary manner, including equipment and wages.
- (9) The amount of money sufficient to compensate the municipality for the property taxes that would be paid on the sewage works if the sewage works were privately owned.
- (10) Any other factors the legislative body considers necessary.

Fees collected under subdivision (8) may be spent for that purpose only after compliance with all provisions of the ordinance authorizing the issuance of the revenue bonds for the sewage works. The board may transfer fees collected in lieu of taxes under subdivision (9) to the general fund of the municipality.

(e) The municipal legislative body may exercise reasonable discretion in adopting different schedules of fees, or making classifications in schedules of fees, based on variations in:

- (1) the costs, including capital expenditures, of furnishing services to various classes of users or to various locations; or
- (2) the number of users in various locations.

SECTION 2. IC 36-9-23-28, AS AMENDED BY P.L.2-2002, SECTION 123, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 28. (a) The legislative body of a municipality that operates sewage works under this chapter ~~may~~ **shall** by ordinance require the owners, lessees, or users of property served by the works to pay a deposit to ensure payment of sewer fees.

(b) The deposit required may not exceed the estimated average

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payment due from the property served by the sewage works for a three (3) month period. The deposit must be retained in a separate fund.

(c) The deposit, less any outstanding penalties and service fees, shall be refunded to the depositor after a notarized statement from the depositor that as of a certain date the property being served:

- (1) has been conveyed or transferred to another person; or
- (2) no longer uses or is connected with any part of the municipal sewage system.

A statement under subdivision (1) must include the name and address of the person to whom the property is conveyed or transferred.

(d) If a depositor fails to satisfy costs and fees within sixty (60) days after the termination of his use or ownership of the property served, he forfeits his deposit and all accrued interest. The forfeited amount shall be applied to the depositor's outstanding fees. Any excess that remains due after application of the forfeiture may be collected in the manner prescribed by section 31 or 32 of this chapter.

(e) A deposit may be used to satisfy all or part of any judgment awarded the municipality under section 31 of this chapter.

(f) A deposit made under this section that has remained unclaimed by the depositor for more than seven (7) years after the termination of the services for which the deposit was made becomes the property of the municipality. IC 32-34-1 (unclaimed property) does not apply to a deposit described in this subsection.

SECTION 3. IC 36-9-23-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 32. (a) **Except as provided in subsections (c) and (f)**, fees assessed against real property under this chapter or under any statute repealed by IC 19-2-5-30 constitute a lien against the property assessed. The lien is superior to all other liens except tax liens. Except as provided in subsections (b) and (c), the lien attaches when notice of the lien is filed in the county recorder's office under section 33 of this chapter.

(b) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before the conveyance to the subsequent owner. If the property is conveyed before the lien can be filed, the municipality shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not less than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

(c) **In the case of real property occupied by someone other than**

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the owner, fees assessed against the real property under this chapter constitute a lien against the property assessed if:

- (1) the delinquent fees are set forth in a notice described in subsection (d); and
- (2) the delinquent fees set forth in the notice exceed the amount of the deposit paid to the utility by the person occupying the real property.

A lien established under this subsection may not exceed the difference between the amount of the deposit described in subdivision (2) and the amount of the delinquent fees set forth in the notice described in subsection (d). A lien established under this section may not be recorded until after the utility has made all reasonable attempts to collect the delinquent fees from the person that paid the deposit described in subdivision (2).

~~(c)~~ (d) A lien attaches against real property occupied by someone other than the owner only if the utility notified the owner within twenty (20) days after the time the utility fees became sixty (60) days delinquent. However, the utility is required to give notice to the owner only if the owner has given the general office of the utility written notice of the address to which his notice is to be sent.

~~(d)~~ (e) The municipality shall release:

- (1) liens filed with the county recorder after the recorded date of conveyance of the property; and
- (2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner, and that the purchaser has not been paid by the seller for the delinquent fees.

**(f) If delinquent fees incurred by someone other than the owner of the real property are paid by the owner as a result of an enforcement action under this chapter, a subsequent delinquency incurred by that same person does not constitute a lien against the real property and is enforceable only against the person incurring the delinquency."**

Page 3, after line 30, begin a new paragraph and insert:

**"SECTION 5. [EFFECTIVE UPON PASSAGE] (a) Notwithstanding IC 36-9-23-33 or any other law, a lien recorded before May 1, 2003, to enforce the collection of unpaid fees and penalties assessed under IC 36-9-23 is void if:**

- (1) the delinquent fees and penalties accrued on a lot or parcel of real property that was not occupied by the owner or owners of the lot or parcel of real property;**



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(2) the delinquent fees and penalties were accrued by one (1) or more tenants of the owner or owners of the lot or parcel of real property;

(3) a portion of the unpaid fees and penalties enforced by the lien accrued at least twelve (12) months before the owner or owners of the lot or parcel of real property received notice of the delinquent fees; and

(4) a portion of the unpaid fees and penalties enforced by the lien accrued at least twelve (12) months before the date the lien was recorded.

(b) The officer charged with the collection of fees and penalties assessed under IC 36-9-23 shall release a recorded lien that is void under subsection (a). Service charges and recording fees may not be imposed upon the owner or owners of the lot or parcel of real property subject to a lien that is void under subsection (a).

(c) This SECTION expires January 1, 2004.

SECTION 6. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

(Reference is to EHB 1243 as printed April 4, 2003.)

YOUNG R MICHAEL

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